

Judicial Ombudsmen, Politics and Legitimacy of Judgments

Anant Gupta, Rishabh Dheer

National Law University, Orissa, Chahata Ghat, Mahanadi Ring Road, Tulasipur, Cuttack – 753008, Orissa (India)

Abstract- The Indian Judiciary has seen a state of catastrophe primarily because of the presence of inefficient and dishonest judges. This research not only tries to catch on the issues that have been related to a judge's performance and standards, departure from standards and corrective measures that can be taken *et cetera*, but also an in-depth study of impeachment cases of Justice Soumitra Sen, Justice P.D. Dinakaran and Justice Ramaswami. Also, Articles 124(2), 124(4) and 217(1) of the Indian Constitution which relate to the Appointment and Impeachment processes have been discussed. Studies done in Latin America and Singapore have been covered which talk about the introduction of digital technology which, apparently, would help in reducing both, delay and corruption. It would also help in keeping a better and comprehensive record, making it difficult for judges to lose case files and extract bribes. The three schools of thought about judicial reform, view problems of the legal system as one of funding, one of indiscriminate access and one of incentive. Yet another group is of the belief that the problem lies in the judiciary following ineffective and rigid. Methods that are being followed in nations like Argentina, Ecuador, Paraguay and Uganda have been compared with the Indian methods while dealing with the judges and the judiciary. The significance of fast track courts and speedy trials have been taken into account for making better judicial proficiency and fund allocation by the government. The gist of the article lies in deliberating about The Judicial Accountability Bill, 2010 and its role in preventing the miscarriage of justice by handling complaints against corrupt judges. It suggests, employing "Crash Programs" as a corrective measure to reduce backlogs, through substantial infusion of resources in the Indian Judicial System. The individual calendar system wherein judges are bound to follow the cases allocated to them from the beginning to the end and case management technique which has been recently introduced recently by the Hon'ble Supreme Court of India includes reforms ranging from pre-trial conferences, strict scheduling to shortened discovery time cut-offs. The paper also throws light on accurate statistics and time limits being other corrective measures, as they appear to work because they sustain a legal culture antagonistic to delay in the judicial arrangement.

Index Terms- Accountability, Backlog, Corruption, Efficiency, Impeachment, Incentive, Judge, Judiciary, Workload

I. INTRODUCTION

"Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless," said Martin Luther King, Jr.

quotes. Judiciary serves to be the *sin qua non* of the democracy, holding colossal power in its hands. It has been discharging its function with least amount of disputes in comparison to the other estates of democracy. But nevertheless it is perceived to be in crisis around the world.

This crisis finds its origin from various reasons like government's small-scale expenditure for its reform, inefficiency of judges, dishonesty amongst the players of democracy and many others. "Something is rotten in Allahabad High Court," said Hon'ble Mr. Justice MarkandeyKatju, hinting towards the present condition in the mentioned high court.¹ Another instance was when the Chief Justice of Gujarat High Court openly conceded to the fact that "In our judiciary, anybody can be bought".² These remarks by such authorities indicate the dire straits of our judiciary and shake the foundation of the relationship between a common man and the judiciary.

Its efficiency relies on the interpretation and application of law and if this pillar works effectively, it brings a direct proportional impact on the economic development of the nation. This is achieved by keeping a check on the government's abuses and facilitating fruitful exchanges amongst individuals.³

Respect for law has been observed as one of the constitutive ingredients for mankind's equitable and effective instrumentality. The concept of accountability is more voluminous than the principles of responsibility and liability. There exists a notion that the lawful application of power imports accountability for its exercise. This, in turn, creates a regulatory and behavioral cage. There should be particular attention paid to the benchmarks concerning good administration, transparent conduct and monitoring; the principle of good faith; the principle of constitutionality and institutional balance, including acting within the scope of functions; the principle of supervision and control.⁴

It is the courts and not the legislature that imbibes in the citizens, the keen, and cutting edge created by law. The procedural and substantive aspects in law are essentially made and administered by persons, whose views and interpretations are buffeted by the winds of change throughout the years, so that it has become a "truism that the quality of justice depends more on the quality of the persons who administer the law than on the content of the law they administer."

¹ <http://www.thehindu.com/news/national/article915161.ece>

² http://articles.timesofindia.indiatimes.com/2010-03-06/india/28137253_1_court-judges-judicial-officers-judiciary

³ See 18 The World Bank Research Observer, No. 1, 61 (Spring, 2003).

⁴ See International Law Association Berlin Conference, Final Report, ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS (2004).

The practice of iniquitous behavior of judges in today's judiciary manifests the crisis of this part of the legal system. It owes reason to the dishonesty and inefficiency of the judges in both civil and criminal cases. There is evidence that such inefficiency affects most, the poor strata of the society.⁵ Inefficiency shown in deciding a case leads to various shortcomings like backlogs and increase in cost of civil and criminal cases. Such shortcomings affect most the general public of our adversarial system.

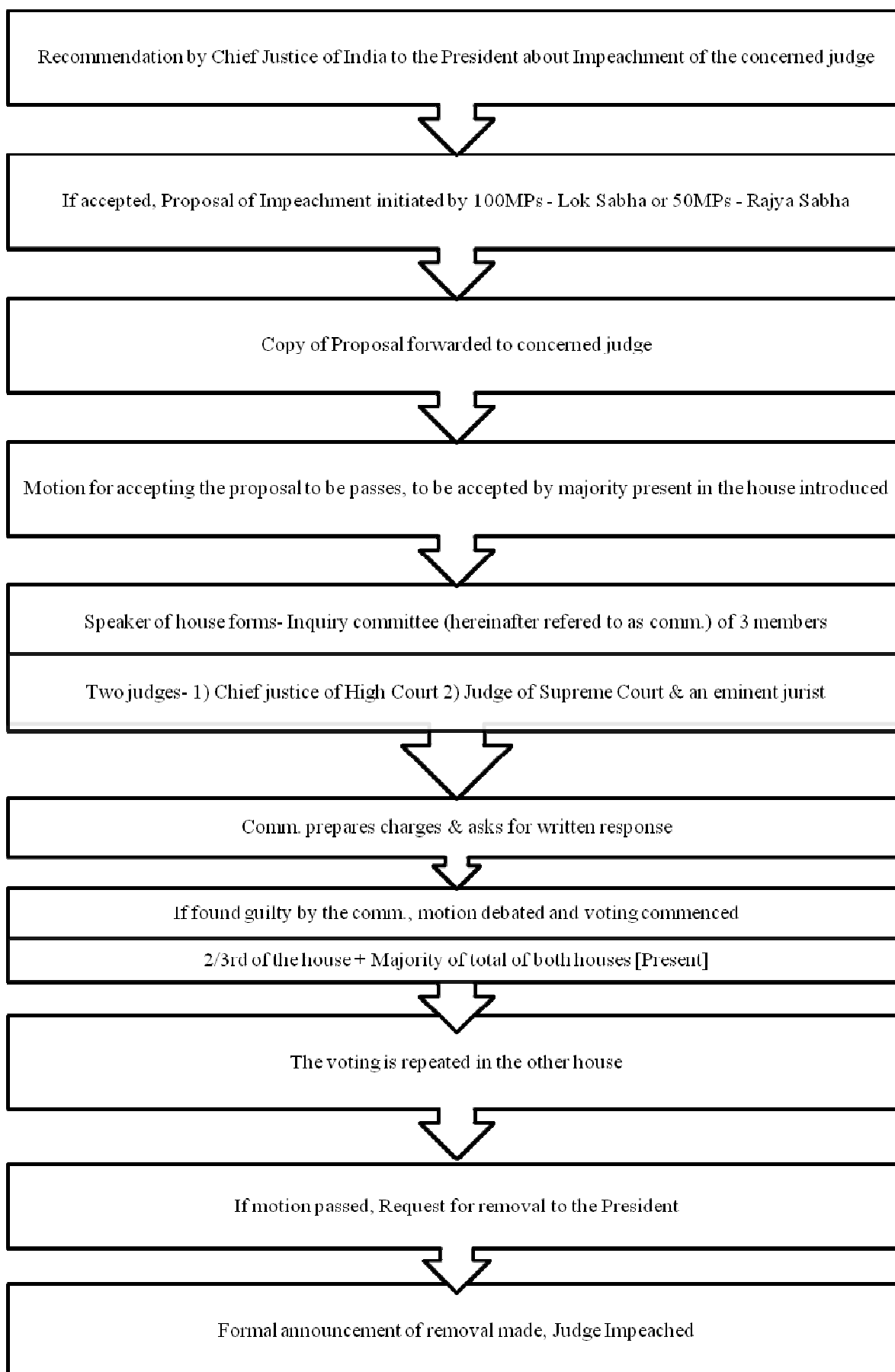
One hypothesis regarding reforms in the judiciary, describes the link between good judiciaries and economic development⁶. It is of the opinion that when courts operate in an efficient manner then the potential misuse of the rule of law by the government is investigated, which in a way aids the economic development of the country. It also carries that-contracts between individuals, when facilitated for productive achievement of it by the courts, enriches the economic development.

Evidence to such scandalous and dishonest conduct can be seen, not only in developing countries like India but also in developed countries like in United States of America, where more than 11 federal judges have been impeached.⁷ In India, the process to evict corrupt judges is interminable enough to make it work effectively. Although the view is not that a concise process may always lead to efficiency but lengthy processes bring down, to a great extent, its orderliness as the possibility of it getting plagued by politics or resignations increases and later on creates escape opportunities which is the reason why, till date, no judge has been impeached in the country. It was only once that the Parliament came close to impeaching a Judge in the case of former Chief Justice V Ramaswami of Punjab and Haryana High Court for corruption in 1991. The process can be comprehended by the following flowchart.

⁵See African Governance Report, p. 206 (2009); The AGR reveals that most judicial officers are poorly remunerated and the overall consequences of these deficiencies restrict the access to justice for many poor and marginalized people as shown in the expert survey carried out in Lesotho, Cameroon, South Africa, and Ethiopia who said that the first instance or lower courts are rarely or never accessed by citizens within three days and delays impede the maintenance of the rule of law and access to justice for all.

⁶See The World Bank Report, *Supra note 3*, pp. 61

⁷See Office of Democracy and Governance, *Guidance for promoting judicial independence and impartiality*, 143 (January 2002).



A member of the higher judiciary can be removed from service only through the process of impeachment on grounds of proven misbehavior or incapacity.⁸ There is no other process in India by which a Judge can be removed from office before his term comes to an end though the process is very cumbersome.⁹

Hon'ble Mr. Justice V. Ramaswami was the first judge in independent India against whom impeachment proceedings were initiated. He was a practicing judge in both, civil and criminal law at the Madras High Court. Later, he was appointed as the permanent judge of the same. The scandal regarding the ostentatious expenditure of his official residence, accusing Ramaswami of abuse of financial and administrative powers while he was serving his tenure as the Chief Justice of Punjab and Haryana. Any further legal work was withdrawn when the Supreme Court Bar Association passed a resolution calling for his impeachment. The committee was constituted by Speaker Rabi Ray, which found Justice V. Ramaswami guilty of 11 out of 14 charges.

The main difficulty with this impeachment case was that out of 411 members present in the Assembly, there were 196 votes for impeachment since he failed "to do complete justice". Out of those who did not vote, 205 were of ruling Congress and its allies. The motion thus failed to pass, as it required not less than two-third majority of total number of members present in both the houses of Parliament and an absolute majority of its total membership.

The main issues regarding the impeachment procedure which were raised are:

- Politics involved

Even after 11 pellucid charges against Justice Ramaswami, only 196 being in favor out of 411 for impeachment revealed something suspicious in the system, especially when out of these, 205 belonged to Congress and its allies. This system, as tagged and criticized by the media and other politicians was 'entirely on political lines'.¹⁰ This criticism indubitably contained some element of truth as heavy politics was involved in such a case.

A very fundamental question which will be dealt with, in any future impeachment proceedings is that-any case which involves such an important decision to be taken by the system be let gone and be lost just because of involvement of dirty politics? Should the just decisions be lost at the cost of politics that prevails, a decision, which could be, a new turnover and a precedent for future cases regarding impeachments?

Although much cannot be done to fight back such a problem but certainly steps can be taken to revamp some provisions in The Judges (Inquiry) Act, 1968 so that there is re-search done at the discretion of some non-political members of the system.

- How effective the impeachment process is, in sweeping out the dirt from the Indian Judiciary

If 2/3rd of the majority of the House does not think that certain charges are correct, are these to be left even though the

other charges, which are *prima facie*, ascertained by the committee to be correct? If a committee of such a high proficiency finds out charges, the charges must be having some basis or an origin. It is often said –'for a stereotypical notion to exist, there is least but some evidence of the notion in the past because of which it is a stereotype.' If charges are framed and are proved by such a committee constituting members like Vice President, there must be some or little truth however less substantial but such little evidence to a wrong committed cannot be let gone just because of lack of majority. "*Fial Justitia Ruat Caelumi*"

After a period of time, Ramaswami voluntarily resigned from his post as the trick played by the Congress in Motion-1 had been successfully carried out.

The only other Indian judge to have faced impeachment proceedings was Justice Soumitra Sen. In a report, the charges framed against him were: -

1. Misappropriation of large sums of money, which he had received in his capacity as Receiver appointed by the High Court of Calcutta;¹¹ and
2. Misrepresented facts with regard to the misappropriation of money before the High Court of Calcutta.¹²

This was a very strong case, which was foreseen then, to lead towards justness because of its congruency in the charges framed. After the charges had been framed and the Inquiry Committee found him guilty of the charges, the Rajya Sabha passed the motion following which, Sen resigned 4 days before the matter was to be taken to the Lok Sabha for further voting. The Attorney General had even advised that the impeachment proceedings be carried on, as it was too late to lapse the motion but after a while it was decided that the Lok Sabha shall not go ahead with the impeachment as President Pratibha Patil approved the notification on Sen's resignation. The amount of disgrace he faced as he escaped the impeachment could be evidenced by newspaper reports where it was severely stated that 'In a bid to avoid the ignominy of becoming the first judge to be impeached by the Parliament, Justice Soumitra Sen of Calcutta High Court tendered his resignation'.¹³

Another judge, Justice Paul Daniel Dinakaran, was charged with land grabbing, escaped the impeachment process even before the impeachment proceedings could be initiated by resigning. It is blatantly noticeable that escaping impeachment could be easily facilitated by the powerful so called 'defence' of resignation which can become a trend in future cases for to-be-impeached judges. The important issue raised is – is resignation a mean of escaping liability? If this is the case then, the judiciary in which the people, after such cases, will undoubtedly lose faith does gross injustice.

⁸See INDIA CONSTI., art. 124, § 4.

⁹Available at: <http://www.expressindia.com/latest-news/The-law-on-impeachment-of-judges/555056/> (last visited Jan. 14, 2012).

¹⁰Available at: www.financialexpress.com/news (last visited Jan. 14, 2012).

¹¹ REPORT OF THE INQUIRY COMMITTEE [Constituted by the Chairman, Rajya Sabha], *In regard to investigation and proof of the misbehavior alleged against Mr. Justice Soumitra Sen of Calcutta High Court*, (September 10, 2010).

¹²*Ibid.*

¹³Available at: www.post.jagran.com/calcutta-high-court-judge-justice-soumitra-sen (last visited Jan. 14, 2012).

II. OBJECTIVES

Simply stating reasons such as corruption, inefficiency and dishonesty does not do the job until unless methods are devised to identify specific solutions, which can be molded to become yardsticks for future. Going in depth and in detail and finding out what caused such deficiency in the system is the need of the hour. In this manner, one can gather the problem's origin and it will be much more easier for the law makers to put into the statutes and rules, some provisions which can put an end to the justice providing system's state of laxity. By realizing the filtered causes, we will try to find solutions, which can act as standards for the Judiciary.

There are various schools of thought, which try to identify the problem in their own course. While one suggests that inefficiency is because of excessive and indiscriminate access by opening the floodgates and bogging courts down with mostly frivolous cases and slowing the meritorious ones, the argument given, may at first, sound very promising but later we shall see that ignoring frivolous cases may not always seem to be the best selection.¹⁴ The other school leads to the belief that the problem is one of funding while another school is of the view that incentives are the problem. Yet another school thinks that the main problem is of inflexible and futile procedures. We will see that this problem has the widest dimensions clubbing with the problem of improper motivation.

Questions like-If certain corrective measures are formulated, how will they help in reducing corruption in the judiciary, are some of the most fundamental questions which are being asked. By studying how some measures have functioned in some countries and inspecting and comparing the situation and state of judiciary of India with them, it helps in deducing whether the measure is beneficial for our society or not. The Judicial Accountability & Standards Bill, 2010 is an apt example of a set of corrective measures assembled from different areas according to different situations for regulating corruption amongst judges.

The Judicial Standards and Accountability Bill, 2010

In India, studies have shown the rot in the judicial system, which is, indeed, disturbing. In view of increasing cases of corruption involving many judges, a drastic overhaul of the judiciary has become imperative, but this process has to be expedited. Corrupt judges in the higher judiciary can be removed only by impeachment. At present, there is no mechanism that can deal with complaints against judges.

The bill is a result of the efforts of the Law Minister, Verappa Moily, who, amidst the din and noise in the Lok Sabha, introduced it on 1st December 2010. The menace of corruption has nipped every possible institution, eating the very core of our polity.

The bill replaces The Judges (Inquiry) Act, 1968 but preserves its basic features. The act, by judicial inquiry, prefaces impeachment as in case of Justice V. Ramaswami's case, where the inquiry inculpated him but the motion fell through, in the Parliament, in 1992. The bill contemplates setting up of a national oversight committee through which the public can lodge complaints against erring judges, which includes the Chief Justice of India and the Chief Justices of the High Courts.

A mechanism is furnished under The Judicial Standards and Accountability Bill that deals with complaints against judges of High Courts and the Supreme Court by making judges answerable for their lapses and also sets judicial standards under which, they must act. The bill mandates to declare their assets and liabilities, including those of their spouses and dependents and to file an annual return for the same. The Bill does not allow any member of the immediate family of judges to appear before them in courts. Also, it mandates that they should not have any close associations with individual members of the Bar. Moreover, there should not be any bias in their work or the judgments they deliver, on the basis of religion, caste, sex, race, or place of birth.

III. METHODOLOGY

Creswell said that - "Research is a process of steps used to collect and analyze information to increase our understanding of a topic or issue". It consists of three steps: Pose a question, collect data to answer the question, and present an answer to the question. The question in hand is such that an ex post facto research methodology is adopted. Study of what and how things exist and function has been the focal point of the research. Such an extensive research methodology also helps find the causes behind the existing loopholes in the system. Qualitative research techniques have also been incorporated as the question involved is regarding the flaws in the system and the study puts forth various reasons behind such an existing system. Empirical analysis of the existing examples also helped to formulate the yardsticks for betterment of the work by the judiciary.

While writing the paper, we communicated with an Additional District Judge (*identity concealed*) of Uttar Pradesh District. The judge had a good impression of the judiciary. The judge knew the ambit in which he should have functioned and thereby performed his duties by not providing any official views or comments on the judiciary or any authoritative report because of provisional and security reasons and the internal laws that govern them. This also gives us an insight into the reality in form of transparency, wherein, ultimately, help was provided in a manner, which was not official but had substance in it.

The problem of incentives has been questioned in the paper. It has been seen that incentives have not been a reason, especially in a country like India, for the inefficiency of judges or for indulgence in any type of malpractice.

One of the members of the Soumitra Sen impeachment committee was also communicated with. The person (*unofficially*) conveyed about the flaws in the judiciary are, the problems faced by the judges, reasons for injustice, delay and other crucial factors elaborated in the paper. He also remarked 'all that glitters is not gold', a strong and thought provoking line. The problem of backlogs has been studied thoroughly and an attempt to provide solutions has been made for the same.

There is no definite answer to the data that has been gathered since it has been based on a country's understanding. Therefore, terms like cases filed, cases resolved and cases pending are subjective. In a similar manner, there are statistical records that sometimes, cannot be held reliable and are not well maintained. It should therefore be taken into consideration that some change

¹⁴See The World Bank Report, *Supra note 3*, pp. 62.

in numbers, during the course of the paper, might be possible and cannot be clarified.

An insight has also been given in the following areas:

- 1) Number of cases filed and disposed off per year;
- 2) The total number of pending cases;
- 3) Average duration of a case;
- 4) Number of people per judge in different countries;

IV. CORRECTIVE MEASURES

The Three Schools Of Thought & Their Relevance In India

There are three schools of thought which apprise us about the pertinence between the problems of the Judiciary like – backlogs, problems associated to performance of judges with the corrective measures, which we seek for betterment in the whole process of administering justice.

❖ First School of Thought - Excessive and Indiscriminate Access

The first view is of excessive and indiscriminate access. What this means is that there is a huge inflation in the number of cases filed, which include not only the worthy ones, but unfortunately, the frivolous ones too. According to the aforementioned school, the legal system has opened the floodgates, extirpating courts down with frivolous cases, mostly.¹⁵ This is because there is excessive access to file cases even if the case is a trivial one. This maybe because of the fact that people are getting aware of their rights regarding filing of suits. The corrective measures suggest that there should be “procedural hurdles” for lawsuits. This confines the number and quality of cases that are filed, concentrating and shifting the focus towards the ones that are laudable. Limiting access for the sake of efficiency, however, raises social concerns because justice may become a luxury that only the wealthy can afford.¹⁶

➤ Relevance in India

There should be provisions in the Indian Judiciary, to screen cases, so that the number is narrowed and the judges can shift their focus on the important ones. Their workload can be tapered to a stage at which the productivity in their performance significantly increases. The reason for there being excessive burden on the judges is evidenced by statistical analysis of reports, some of which have been mentioned below.

➤ Why is there excessive work load on Indian judges?

According to statistical reports as on 31st March 2010, the total number of judges sanctioned in courts for the year, 2010 was 16,880 in the lower courts, 895 in the High Courts and 31 in The Supreme Court of India.¹⁷ Also, vacancies of posts in the number of judges are 2,785 in the lower courts, 267 in the High Courts and 2 in the Supreme Court of India.¹⁸

The total population of India as per the census report 2011¹⁹ is 1,21,01,93,422.²⁰ If the work load per judge is to be calculated, we reach a figure of approximately 82,000 people falling under one judge, which is an astonishing number; analysis of which, *prima facie* tells that the burden on each judge is exorbitant enough, to excessively lower the productivity of the judge as a consequence of which, efficiency shown in each and every case is a little extra to expect. According to the National Litigation Policy Report, 2010²¹, the total numbers of cases pending in all the courts are 3,21,27,796 out of which, the lower courts have the highest share (2,78,89,465). Newspaper reports tell us that India would need 124 years for clearing pending cases in its courts.²² The reason why lower courts hold such a big number has been explained later, in the article. As compared to the United Kingdom, where a single judge²³, handles cases of just about 2,000 people. According to another report,²⁴ the motions per active judge in the United States in 2011 were 937 and the total number of cases pending were just 4,479. This indicates the efficiency and the apt amount of workload, which is levied on a judge of the U.S. courts.

A solution for such a problem, as suggested by experts and judges approached is Alternative Dispute Resolutions, hereinafter ADRs, like arbitration or small-claim courts. They seem to be a more suitable option to reduce the pressure faced by judges in functioning in the judicial system. ADRs will automatically help to decrease the number of pending cases and help in shifting both, the judge’s mind free from the burden of frivolous cases and his mind’s main focus on the meritorious ones.

Therefore, ADRs, though not directly affect or better the performance of judges but indirectly do so, thereby acting as a useful measure.

❖ Second School of Thought – Incentives

The second school of thought comes across with the problem of incentives. In general, if the judges are not provided with the proper incentives they deserve, the judges will slow down in their performance. The rationale behind this is that if there is dearth of proper motivational techniques, it would be difficult for the system to sustain the judges as they might feel demotivated because of the amount of work they do, as a result of which the whole judicial system seems to be crumbling. It is seen in many countries that incentives may not always prove to be the main constituent of a better performance.

Another problem discussed further is of complicated procedures, which, when clubbed with the problem of incentives

¹⁹ See Census Report 2011, (Government of India) Available at: <http://censusindia.gov.in/2011-prov-results/indiaatglance.html> (last visited Jan. 14, 2012).

²⁰ The figures for India and Manipur, include by sex, the estimated population, 0-6 population and literates of Paomata, Mao Maram and Purul sub-divisions of Senapati District of Manipur for Census 2001 and 2011.

²¹ Available at: www.pib.nic.in (last visited Jan. 14, 2012).

²² See Dr. V. Prasad, *Condition of Indian Judiciary*, The Tribune, May 20th, 2007, p.14.

²³ Available at: www.Judiciary.gov.uk (last visited Jan. 14, 2012).

²⁴ See United States courts of appeals 5th circuit, clerks annual report, JUDICIAL WORKLOAD STATISTICS (July 2010-June 2011)

¹⁵ See The World Bank Report, *Supra note 3*, pp. 62.

¹⁶ *Ibid*

¹⁷ Available at: http://supremecourtsofindia.nic.in/courtnews/2010_issue_1.pdf

(last visited Jan. 14, 2012).

¹⁸ *Ibid*

is seen to be the most crucial area of the inefficiency of judges. It also seems that being just incentive-oriented for the Judiciary is not always perfectly effective. Here, the aspect of quality comes into picture where only efficiency is regarded to be the prime motive. Thus, incentives cannot amend ceaseless judicial inefficiency alone.

- **Relevance in India**

This problem might not seem to be a big problem faced by the Indian judges as after the 6th pay commission²⁵ the salary structure has increased to three-folds. The CJI who received Rs.33, 000 is now getting Rs.1, 00,000 a month while the salary of the Apex Court inflated to Rs.90,000 from Rs.30, 000. Chief Justices of High Courts got a boost from Rs. 30,000 to Rs.90, 000 while the other judges of High Courts were paid Rs. 80,000 from the earlier Rs. 26,000.

As per studied conducted, it was seen that most judges in India are satisfied with such an increase and it is nowhere to be seen that the inefficiency in their performance is now related to that of incentives. Such an increase in salary and provision of other moral incentives the Judiciary provides, is helping the system in sustaining judges with better productivity.

Thus, we can infer that incentives might seem to be a yardstick in the judicial systems where the incentives are exceedingly low but as per current situation of India, the need for further improvement in incentives is not called for, as there is sufficiency of the same. The main focus of reforms should therefore not be on incentives to a great extent.

- ❖ **Third School of Thought – Funding**

The third school of thought is of the view that the problem is of funding. There are four dimensions identified to this problem:

- A. Resources
- B. Training
- C. Systems
- D. Staff and Infrastructure

It suggests that if there is improvement shown in developing the adequate amount of the mentioned four, there can be efficiency reached. According to case studies done in Paraguay, there was introduction to two patterns i.e. increase in the number of judges and oral proceedings.²⁶ The result of this type of an experiment was that there were savings in terms of time and cost. Oral proceedings helped in saving time and less paper work resulted in reducing cost. In a unique study in Uganda, it was seen that the minor issue of deficiency of stationery caused the backlogs.

- **Relevance in India**

As mentioned before that there is inadequacy in judges and staff, it is a point of concern for the Judiciary to see that over the years, as the population of the country has increased, the number

of cases filed have also increased but there has been no proportional and adequate increase in the number of judges handling the plethora of cases of the enormous population. For instance, the Allahabad High Court's sanctioned number of judges is 160 but at present the working strength of judges is 82.²⁷ There were two reasons viewed by a judge in our research (*identity concealed*); one, lengthy procedures; and two, lack of courtrooms. The latter hints towards the lack of infrastructure provided by the government, which makes it hard for the judges to accommodate proceedings. In another study conducted, it was found out that in more than twenty-five districts of the State of Uttar Pradesh, there seems to be an absence or deficit of the least infrastructure required to set up district courts' court rooms. The district court of Gautam Budh Nagar did not have proper court rooms for twelve years' proceedings because of which, had to be carried out in a rented place in a market. This indicates the plight of the Indian Judiciary where there are no courtrooms available for proper jurisdictions in a State of the country, which has the highest number of Legislative members.

The spending that the government does on the Judiciary is somewhere between 0.0077% of the GDP.²⁸ It is suggested by experts that if this spending is increased to a decent figure of 1%, then conditions pertaining to funding may improve, as the infrastructural administration and other expenses will be met without much hindrance. Another insight of the Indian courts was found in a research that there are not only vacancies in the posts of judges but also for the posts of supporting staff. This supporting staff is needed for all the administrative work, which, by the lack of personnel, creates inefficiency as there is no specialization in one job but one person has to do several jobs for which he is not officially appointed. For instance, in the District court of Gautam Budh Nagar, the post for accountant in the district court is vacant. This, although being a very small issue, raises concern as it goes on a higher level. There, a person who is appointed to do some other work is handling the accounts, which may result in discrepancies in the outcome of the job's expected function. The District Magistrate, although, is empowered with assigning additional charges to the judges of a district court but overdoing of the same and overburdening the judges with work may lead to the same work load theory as seen in the first school of thought.

View of the government officials is that the politicians handling the finance of the government want this part of the system to remain weak. That is why this sector is defined as "unplanned sector", though not officially, but in real terms.

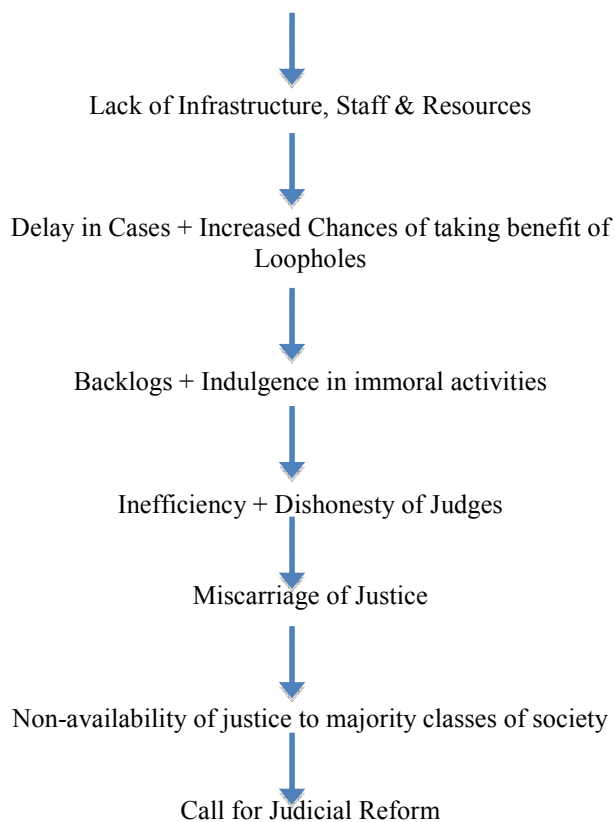
²⁵Available at: www.finmin.nic.in/6cpc (last visited Jan. 14, 2012).

²⁶ Maria Dakolias, *Court Performance around the World A Comparative Perspective*, pp. 3 (World Bank Technical Paper no. 430).

²⁷Available at: www.allahabadhighcourt.in (last visited Jan. 14, 2012).

²⁸Available at: <http://indiabudget.nic.in/> (last visited Jan. 14, 2012); Expenditure on Ministry of Law being ` 687.19 cr. and Total GDP being \$1.73 Trillion (USD).

Allocation of Budget for expenditure on Judiciary – 0.0077% of the GDP



Thus, in view of the predicament of the Indian Judiciary, this problem has great significance as explained by the studies. The measure, which is to be taken as per the need by the government i.e. proper, funding, may act as an effective tool to reform the Judiciary and diametrically affect the performance of Indian judges. This will also help reduce backlogs, which have been considered as a worm plaguing the Judiciary for a long time.

❖ Lengthy and Rigid Procedures

Apart from the three schools of thought, which regard the problems as those of funding, incentives, and indiscriminate access, there is another problem regarding the malfunctioning of the Judiciary. This problem is well known, as it is pervasive throughout the government- the problem of rigid, ineffective and lengthy procedures.

There are several yardsticks, which can be derived when the corrective measures of this problem are reached: -

1. Crash Programs: These are programs which were introduced in the U.S. District Court of Colorado to reduce the trouble of backlogs. This is an effective measure which was taken and which was successful in the courts which basically dealt the cases even before they went for a trial. It was defined by a newspaper of the United States of America when a six-week program was undergoing as a “massive assault on the backlog”. There were three categories of cases in this program, namely-

a) The cases disposed off prior to the crash programs;

b) The cases disposed off during the crash programs;

c) The cases not disposed off at the end of the crash programs.²⁹

It was seen that this district court had 111 cases pending out of which 100 cases were cleared off after the use of this program. This shows that there was efficiency level of around 90%, which is very useful to cull out backlogs of the courts. Under these 100 cases, 36 were of category (a)) and 64 belonged to category (b))

Crash programs, although, were seen to be highly effective in disposing off cases in the backlog in the short-run but somewhere lacked the long-term impact aspect which could be evidenced in Queens and Brook land.³⁰ In India, crash settlement programs are still to be implemented in the provisions of the Judiciary but it is suggested that this type of a program can help reduce the enormous backlog here. In a superior court of Santa Monica, the crash settlement programs were mandatory for the court. Such a compulsion in India can do great wonders.

Thus, crash programs seem to be an option to reduce backlogs effectively in the short term, but in the long term it may fail to perform such a function.

2. Usage of Information Technology (IT): These are important and helpful tools in obtaining accurate statistics which replace the age old paper based procedure. What this does is that it makes the judge accountable by making it simply difficult for him to state excuses like loss of case file or it can be evidently checked if there is any bribe taken from the litigants.

The state of use of information technology as a part of decision making is seldom used in India although there has been a change in the trend which can be seen as Supreme Court Cases and other High Court decisions are available online which includes the pending case status which is an indicator of progressing transparency in the administration.

There is lack of computer facilities and defective typewriters are likewise, not sufficient reasons for not deciding cases on time. They merely ease the courts work load but their lack should not be used to justify delay.³¹ It is also to be realised that in a place like India where well functioning court rooms are a distinct dream, providing courts with the proper information technology is a secondary step towards reform.

In a case study done in Latin America and Singapore, computer systems helped reduce delay. It also appeared that it reduced corruption because of the accountability factor.³²

3. Time Limits: This concept focuses to make the judges accountable, thereby increasing their efficiency by assigning a specific period of time per case in which it has to be cleared. In countries where there are mandatory time limits, there is eradication of slow trials and this popular response helps in

²⁹See 44 Denv. L.J. 380 – Court congestion and crash programs, a case study, Sykes, Gresham M.; Isbell, Michael.

³⁰See 74 Judicature 76 (1990-1991); Limits of Crash programs, the church, Thomas Space W.; Space Heumann, Milton.

³¹Available at: http://sc.judiciary.gov.ph/jurisprudence/2005/dec2005/am_05_10_299_mctc.htm (last visited Jan. 14, 2012).

³²See 2, Calvoet. al, *Journal of Latin America and Caribbean Economic Association*, pp. 120 (Spring 2002).

improving the poor track records of the courts. The countries in which these type of time limits are enforced are Argentina, Bolivia and United States of America.

There can be 2 yardsticks related to this concept:

a. Individual Calendars: This yardstick concentrates on increasing the accountability and creating an impact on judicial performance. This type of system was propounded by the Gesell Committee.³³ This was first used by a U.S. Metropolitan Court where the judges were assigned a specific number of cases which they had to strictly follow from beginning to end. In the U.S. court, cases or matters are assigned to specific judges by a method of random allocation as determined from time to time by order of courts.³⁴ One alternative to this yardstick is a master calendar where many judges work on different parts of a case at different times.³⁵ The individual calendar systems are found to be more effective than the master calendars as there is a sense of hard work in cases where the judge in charge of a case becomes more familiar with their cases and feels accountable.

Although the individual calendar system may be *prima facie* a safe option as found out by other countries in Latin America but the fact cannot be ignored that the result of a process like this is not always uniform.

b. Case Management: It identifies that there are four players in a judicial system which are:

1. Judges
2. Lawyers
3. Litigants
4. Court Staff and the Registry

The Law Commission of India has assigned specific duties and roles to play for ensuring better management of a case. This regards judges more than their actual position and sees them as managers while lawyers and litigants are expected to play the role to be updated with the information, documents, and the time of the case as no one would spend time more than what is required on daily matters. It also regards court registry as the backbone of the system because of the administrative work they perform. They need to show efficiency related to all papers pertaining to a case from beginning to the end.³⁶

In an experiment conducted in the Delhi High Court, the cases were categorized and accumulated in which cases of similar nature were grouped under one head and were dealt similarly. This helped in mass litigation. Not only is it a tool of increasing accountability of judges but is also intended towards increasing public confidence in the justice system.³⁷

4. Statutes involving action against Corruption amongst Judges in India: The need for an institutional mechanism has

long been felt that could deal with cases of judges of various High Courts and the Supreme Court charged with misconduct or any similar malpractice. Another question that has to be dealt with is whether or not, judges on whom investigation is pending be assigned work by the Judiciary. The duty lies with the government to fast-track all cases related to corruption, nepotism and moral turpitude. The impeachment process of a judge needs to be speeded up so that the President's sanction is obtained sooner and the judge is thereby impeached.

There is a debate whether the executive should have the power to retire judges but in order to maintain the independence of the Judiciary; this power should remain in the hands of the Judiciary itself, which is the cornerstone of the Constitution. The Supreme Court has the power to quash down any amendment relating to impeachment of judges if it does not pass the test of judicial scrutiny as otherwise, it would be violative of the basic structure of the Indian Constitution.

V. CONCLUSION

Inefficiency and dishonesty of the keepers of law has been a behavior, rife around the globe. It is because of these reasons that the Judiciary weakens by carrying the burden of backlogs and costing it in terms of both civil and criminal cases. There is an indirect relationship between good judiciaries and economic development of a country. It does so by facilitating fruitful contracts between individuals and by keeping a check on abuse of power by the government.

An effective way to put an end to such occurrences of inefficiency is getting the judge impeached by a process contained in the constitution of the country, or otherwise. The impeachment process in India is lengthy enough to be evidenced in the impeachment processes of judges like Hon'ble Mr. Justice V. Ramaswami and Justice Soumitra Sen. Both the impeachments ended in a fiasco. Involvement of politics and resignation-these were two foremost ways because of which, neither both of them nor other judges in independent India, impeached. The Judicial Standards and Accountability Bill, 2010 was seen as a new beginning in the issue of corruption prevalent in the judiciary. It came out as a modification of The Judges (Inquiry) Act, 1968, preserving the basic features.

To find out the reasons why the Judges are inefficient in their work, identification of three schools of thought was done. The first talks about indiscriminate access of the common people to file cases. According to this school, people now are more aware of their right hence they tend to file more and more trivial cases which ultimately increase backlog. Because of this, the cases, which need to be at the top priority, lose their time and importance. A solution, which can be derived out is Alternative Dispute Resolution systems (ADRs) like arbitration and small-claim court. There is a proper workload analysis done, by which the workload on a judge in India and other countries is determined. The second school observes the problem to be one of incentives. It believes that efficiency of judges is dependent (like in management) on the incentives the judge receives. These incentives not only include monetary motivational techniques but also non-financial incentives. Another school correlates the

³³ Available at: www.dchs.org/GerhardAGesell/App1-individual%20c.pdf (last visited Jan. 14, 2012).

³⁴ Available at: www.mnd.uscourts.gov/local_rules/LR-40-1.html (last visited Jan. 14, 2012).

³⁵ See The World Bank Report, *Supra note 3*, p.65.

³⁶ Available at: www.lawcommissionofindia.nic.in/adr_conf/Justice_Lokur.pdf (last visited Jan. 14, 2012).

³⁷ Available at: www.albertacourts.ab.ca/provincialcourt/courtcasemanagement/tabid/331/default.aspx (last visited Jan. 14, 2012).

problem of inefficiency of the courts with funding, which includes resources, training, systems and staff and infrastructure. In studies in India and other countries it is evident that such a problem is of great concern as it aids in creation of backlogs. Other than the three schools of thought, there is yet another group which blames lengthy and rigid procedures to be a major flaw. To help avoid getting plagued by such procedures, yardsticks such as crash programs, which is dealing of cases before trials, usage of IT, which fastens decisions and eliminates the age old paper work methods, time limits which, fixes time for a judge to solve a case with techniques like individual calendars and case management and lastly statutes which involve action against corruption amongst judges, which has in its purview, The Judicial Standards and Accountability Bill, 2010.

encouragement given by many individuals to whom we would like to offer a token of gratitude and true appreciation. We extend our sincere thanks and gratitude to an Additional District Judge (*identity concealed*) and Mr. P.K. Goel, Member of Impeachment committee of Justice Soumitra Sen. Their invaluable support, encouragement and incessant stimulation, sustained the tempo of our progress.

Thanks are due to those who introduced us to the fascinating world of knowledge and trained us enough to pursue this work with confidence. Many of our colleagues offered their Best Wishes and helped directly or indirectly towards the culmination of this work. It would be very difficult to individually acknowledge their names; we offer our sincere thanks to all of them

ACKNOWLEDGMENT

This work is an outcome of the inspiration and

BIBLIOGRAPHY

STATUTES

INDIA CONSTI., art. 124, § 4. 8

OTHER AUTHORITIES

18 The World Bank Research Observer, No. 1, 61 5
Denv. L.J. 380 – Court congestion and crash programs, a case study, Sykes, Gresham M.; Isbell, Michael 18
Dr. V. Prasad, *Condition of Indian Judiciary*, The Tribune 14
Judicature 76 (1990-1991); Limits of Crash programs, the church, Thomas Space W.; Space Heumann, Milton. 19
Office of Democracy and Governance, *Guidance for promoting judicial independence and impartiality*, 5

REPORTS

African Governance Report, p. 206 (2009); 5
Census Report 2011 14
International Law Association Berlin Conference, Final Report, ACCOUNTABILITY OF INTERNATIONAL ORGANISATIONS (2004). 5
REPORT OF THE INQUIRY COMMITTEE 9

SITES

www.pib.nic.in 14
http://articles.timesofindia.indiatimes.com/2010-03-06/india/28137253_1_court-judges-judicial-officers-judiciary 4
http://sc.judiciary.gov.ph/jurisprudence/2005/dec2005/am_05_10_299_mctc.htm 19
http://supremecourtfindia.nic.in/courtnews/2010_issue_1.pdf 14
<http://www.thehindu.com/news/national/article915161.ece> 4
www.albertacourts.ab.ca/provincialcourt/courtcasemanagement/tabid/331/default.aspx 21
www.financialexpress.com/news 8
www.finmin.nic.in/6cpc 15
www.Judiciary.gov.uk 14

www.lawcommissionofindia.nic.in/adr_conf/Justice_Lokur.pdf	21
www.mnd.uscourts.gov/local_rules/LR-40-1.html	20
www.post.jagran.com/calcutta-high-court-judge-justice-soumitra-sen	10

AUTHORS

First Author – Anant Gupta, 1st Year, B.B.A. LL.B, National Law University, Orissa, hahata Ghat, Mahanadi Ring Road, , ulasipur, Cuttack – 753008, Orissa (India)

Second Author – Rishabh Dheer, 1st Year, B.B.A. LL.B, National Law University, Orissa, hahata Ghat, Mahanadi Ring Road, , ulasipur, Cuttack – 753008, Orissa (India)