

The Indian Journal of Public Administration

*Quarterly Journal of
The Indian Institute of Public Administration*

Special Number

on

Excellence in Public Service



EDITOR
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JULY-SEPTEMBER 2006
VOL. LIH NO. 3

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EXCELLENCE IN PUBLIC SERVICE: THE NEED FOR FINANCIAL AUTONOMY TO THE JUDICIARY

T.S.N. SASTRY

The independence of judiciary is an essential element of the Indian Constitution. However, the concept of judicial independence links with that of financial autonomy too. If the judiciary is made independent without financial autonomy, it is not able to serve the purpose for which the autonomy has been given to it by the Constitution. Lack of financial autonomy and poor allocation of funds to the judiciary is the main cause and concern both to the public and to the judiciary. If the same trend continues any more even after six decades of Independence, it will certainly result in a chaotic condition in the years to come. Taking into consideration the important role played by judiciary in shaping the polity of a country, this article analyses the concept of financial autonomy with a comparative perspective and identifies the steps need to be taken to restore the confidence of the common people before the institution reaches its blink.

INTRODUCTION

THANKS TO the vision of the constitutional framers, the Indian judiciary has been given the required independence in administering justice. As rightly observed by the Supreme Court,¹ the constitutional scheme has been crafted to protect the judiciary and its staff from the clutches of the executive and legislative interference. But at the same time, this institutional independence certainly hampers the autonomy of the institution of the judiciary when it is dependent upon the other organs of the state for its financial needs. In the process, it is not able to do justice to the expectations of the constitutional framers.

¹Union of India & others, V. Pratibha Bonnerjea & Another, 1995 (6) SCC 765.

It is a universally recognised principle that the judiciary has to administer justice to defeat the principle delay defeats justice. If it has to meet the basic aspirations of the people and the demands of the constitution, it needs to be given a free hand to meet its financial needs without any interference from the other organs of the state. Though, the constitution has provided a scheme to meet the financial needs of it from the consolidated fund of India, many a times, it has to face hardships to get the nod of the executive. In the process, it is not able to meet the socio-economic aspirations of the constitution. This lack of financial autonomy resulted in piling up of cases in courts right from the Supreme Court to the lowest court. According to estimates, in Supreme Court alone there are nearly more than two lakh cases are pending at present. In this scale if the trend is continued any more, certainly it will jeopardise the interests of the people in no time. Since financial autonomy has a overbearing on the excellence in public service in the most important organ of the state, this article analyses the significance of financial autonomy to the judiciary that is recognised universally and specifies the policy formulations that need to be addressed to uplift the third chamber of the state before it collapses.

Financial Autonomy: The International Perspective

From the first International Congress held in 1955, till date the International Commission of jurists relentlessly requesting the member states to extend the required independence which includes the financial autonomy as an essential element.² Among the various conferences of the ICJ, the Syracuse Draft Principles, 1981³ and the Special Rapporteur L.M. Singhvi⁴, are popular reports which expressly enunciated the necessity of financial autonomy to the judiciary. The 7th Congress on the Prevention of Crime and the Treatment of Offenders held in 1985 too advocated for the financial autonomy of the judiciary in no unequivocal terms. Above all, the 1983 Universal Declaration of the Independence of Judges and the Beijing conference of the Chief Justices of Asia and Pacific, 1995 have enunciated that, it is the duty of a state to provide adequate resources to the judiciary in dispensing the administration of justice.⁵ The Beijing Declaration of Chief Justices even went a step further and held that in order to protect the basic

²For a detailed discussion on the aspect see: Shimon Shetreet "Independence of Judiciary: The Contemporary Debate" 1988; also see Bulletin of CIJL, Geneva, 1955 and for a brief view of it see the Report of the National Commission to Review the Working of the Constitution, 2001, Vol II (book 2) pp.74-78

³For the Draft Principles on the Independence of Judiciary see CIJL No.9 1981 and No.11, 1983, No.23,1989

⁴See for the Report CIJL Bulletins of 1980, and 1981 and 1982.

⁵See CIJL Bulletin no. 16, 1985; also see No.23, 1989, No 19-20, 1987 *et al.*

human rights of the citizenry of each state, it is the fundamental duty of a state to over see that the judiciary should not be made a scapegoat in protecting the rights of the population of a polity just for want of finances.

An Overview of the Scenario in Other Countries

In countries like USA, Japan, Italy, the judiciary is highly independent financially. In these countries, the judiciary alone prepares its budget and submits to the Legislature directly. In general the judiciary requests, it is normally passed without any cuts. The budget includes the future planning for the courts, long term planning, space or accommodation and also incorporates the usage of latest scientific gadgets. In view of the autonomy that is given, the judiciary in these countries could able to live up to expectations of the people. In many other countries like Germany, China, Australia, etc the constitutional courts are highly independent for their financial needs are concerned. Even in the Latin American countries though the judiciary is not completely independent compared to that of USA and others, financially they are in a better position since there is a constitutional mandate on each state of the region to allocate a fixed percentage of the country's total budget to the judiciary.

Indian Scenario

No doubt, the concept of independence of the judiciary is one of the basic concept of our Constitution. However, this concept of independence of judiciary however, does not confine regulating the service conditions of the judges and administration of justice alone. It includes financial autonomy too.⁶ The concept of financial autonomy though inherent in the constitution has been neglected and overlooked even after six decades of independence. The lack of Financial independence leads to a lot many problems which are *First*, the judges many a times have to work under pressure for quick disposal of cases, old and new. *Secondly*, the pressure principle will certainly have an adverse impact on the mental faculties of the judges which may result in the miscarriage of justice. *Thirdly*, the lack of proper planning for the increasing level of litigation, even for a petty case, the litigants have to wait for a long time to get Redressal. *Fourthly*, in view of deficiency of number of judges at various levels, there is an enormous delay in disposing of the cases. *Fifthly*, the delay in disposal of cases, especially in criminal matter is leading the courts to issue bail orders in increasing numbers only to reduce the percentage of under trail prisoners. Even then many a times, several under trial victims are languishing in jail for longer periods for no fault of theirs. *Finally*, the

⁶For the View of the Supreme Court on Independence of the Judiciary the Report of the NCRWC n2, p.773 et seq. 809-11 and also see S.P Gupta V. Union of India and another 1981, scc 87; Union of India & others V. Pratibha Bonnerjea & another 1995 (6) SCC 765.

judiciary, the most important public service of the nation has to carry the blame for deficiency of excellence in rendering justice to the people.

CONCLUSION

Though there is no financial autonomy to the judiciary, we are certainly in a better position compared to many of the countries in upholding the constitutional goal of social justice to a great extent. But proper planning and financial autonomy certainly enhance the capacity of the judiciary to defy the popular saying, justice delayed is justice denied.

The NCRWC studied the aspect in depth and came out with an exhaustive list of proposals which needs to be attended without any more delay. Among the various recommendations, a few of them are stated in brief.

- Instead of continuing the allocation of funds by the Union and States to the consolidated Fund of India for the allocation of resources to judiciary, the Planning Commission should allocate resources separately, in consultation with the Finance Commission, which will address most of the problems.
- Need for the constitution of a National Judicial Council with administrative offices of its in each State under the exclusive control of the judiciary.
- In order to increase the efficiency of judiciary an Institute of Court Management need to be started immediately with Post graduate and research programmes.
- The National Judicial Academy at Bhopal has to be converted into a Common Wealth Law Centre.
- There is a need to establish a International Legal Date Centre in New Delhi.

Apart from the above suggestions rendered by the NCRWC, the following suggestions needs a meritorious consideration.

- As suggested by the NCRWC, alternative dispute resolution need to be considered by constituting fast track courts in the same way as Lok Adalats. To dispose of the pending cases, apart from the retired judges, eminent jurists such as renowned and senior professors of law may be appointed on *ad hoc* basic. To this effect, the constitution need to be amended to insert provisions on the lines of Art 124 (3).⁷
- The Fast Track Courts may be permitted to handle petty cases of

⁷K.Gupteswar: Law Teachers for the Bench, in Feestschri: Constitutional Jurisprudence and Environmental Justice, D.S. Prakasa Rao, (ed.,) 2002, pp.89-93.

small causes by senior counsels and senior teachers of law to preside over these courts during the various vacation periods of the courts and Universities. Due to such appointments, the experienced teachers will also get practical experience to train the students and also a huge amount of money can be saved by the exchequer.

- There is a need to constitute four benches of the Supreme Court in all the Four regions of the Country, *i.e.*, North, East, West and South. In this regard the Supreme Court should come forward whole heartedly to support the Union of India without any inclination towards one-upmanship.
- Apart from the constitution of benches of the Supreme Court, the highest court in the capital should be allowed to decide only constitutionally important cases. This is necessary in an era of globalisation, and, to meet the popular expectations of the citizens of the country. This set up will help the Supreme Court to attend matters of international importance and to address to the needs of the State to cope up with the changing dimensions of International Law.
- There is a need to establish Indian Institute of Legal Management Institutions on the lines IIM's in various parts of the country. These institutions need to have an integrated approach to coordinate and monitor with the existing Law Universities and other Legal Departments of the country.
- The National Judicial Academy should conduct annual Legal Congress on an annual basis in order to address contemporary aspects of law on the lines of the Indian Science Congress, Historical Congress etc.
- More Funds need to be allocated by way of fellowships to researchers and to promote interest in the students at the Post Graduate and Research Level. Further, in drafting the legislations the necessary inputs from senior researches and professors need to be incorporated instead leaving to the administrative officers.

It is time that the executive and legislatures should take quick steps to bail out the judiciary before it reaches the blink to collapse. As rightly pointed out by the Chief Justice of India, Justice Y.K. Sabhrawal on the eve of the 60th Independence day celebrations, the judiciary need to be gauged with latest information technology and the necessary infrastructure facilities need to be provided at the earliest. In a country where in we have around 5,000 and odd Legislators (this includes the both houses of the Parliament and State Legislatures), is it not the time to increase the strength of 600 and odd

judges (only the Supreme Court and High Courts strength alone taken) to dispense justice and to clear the lakh of cases that are pending through out the country.

As the Human Rights Standing Committee at the LAWASIA⁸ resolved, "a proper system of court and proper performance of the judicial function are each essential to the maintenance of proper values of the rule of law, and the attainment of human rights with in a society." To realise the goal of LAWASIA and that of the constitution, the autonomy that the judiciary needs financially need to be addressed at the earliest in order to meet the concept of Excellence in Public Service without any fear or favour.

⁸CIL Bulletin, No.11, April 1983, p.49.